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By: **Delegates Hammen and Elliott**

Introduced and read first time: February 11, 2004

Assigned to: Health and Government Operations and Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Exemptions and Deductions - Health Care Coverage Required**

3 FOR the purpose of prohibiting an individual whose income exceeds a certain  
4 percentage of a certain poverty income level from deducting a certain exemption  
5 and using certain deductions unless certain individuals had certain health care  
6 coverage for a certain part of the taxable year; authorizing individuals who meet  
7 certain requirements to satisfy the health care coverage requirement by having  
8 a certain health benefit plan or individual health benefit plan; defining certain  
9 terms; providing for the application of this Act; and generally relating to  
10 prohibiting certain income tax exemptions and deductions under the income tax  
11 unless an individual has health care coverage.

12 BY repealing and reenacting, with amendments,  
13 Article - Tax - General  
14 Section 10-101, 10-211, 10-217, and 10-218  
15 Annotated Code of Maryland  
16 (1997 Replacement Volume and 2003 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Tax - General**

20 10-101.

21 (a) In this title the following words have the meanings indicated.

22 (a-1) "Applicable tax base" means the portion of the income of an investment  
23 conduit or a special exempt entity on which a tax is imposed under:

24 (1) § 11, § 527(b), § 528(b), § 852(b)(1), § 857(b)(1) or (4)(a), or §  
25 860G(c)(1) of the Internal Revenue Code; or

26 (2) any other section of the Internal Revenue Code that the Comptroller  
27 determines by regulation to impose an entity level income tax on an entity that the  
28 Comptroller determines to be:

1 (i) an investment conduit under subsection (e-1)(2) of this section;  
2 or

3 (ii) a special exempt entity under subsection (h-1)(2) of this section.

4 (A-2) "APPLICABLE POVERTY INCOME LEVEL" MEANS THE AMOUNT SPECIFIED  
5 IN THE POVERTY INCOME STANDARD THAT CORRESPONDS TO THE NUMBER OF  
6 EXEMPTIONS THAT THE INDIVIDUAL MAY DEDUCT IN THE TAXABLE YEAR TO  
7 DETERMINE FEDERAL TAXABLE INCOME UNDER § 151 OF THE INTERNAL REVENUE  
8 CODE.

9 (b) "Corporation" includes an association or joint-stock company.

10 (c) "County income tax" means the county tax on income authorized in §  
11 10-103 of this subtitle.

12 (c-1) "Federal adjusted gross income" means:

13 (1) for an individual other than a fiduciary, the individual's adjusted  
14 gross income as determined under the Internal Revenue Code;

15 (2) for a fiduciary other than one described in item (3) of this subsection,  
16 the fiduciary's taxable income, as determined under the Internal Revenue Code,  
17 increased by the amount allowed to the fiduciary as a deduction for a personal  
18 exemption under § 642(b) of the Internal Revenue Code; or

19 (3) for a fiduciary exempt from taxation under § 408(e)(1) or § 501 of the  
20 Internal Revenue Code, the fiduciary's unrelated business taxable income as defined  
21 under § 512 of the Internal Revenue Code.

22 (d) (1) "Fiduciary" means a person holding the legal title to property for the  
23 use and benefit of another person.

24 (2) "Fiduciary" does not include:

25 (i) an agent holding custody or possession of property that the  
26 principal of the agent owns; or

27 (ii) a guardian, as defined in § 13-101 of the Estates and Trusts  
28 Article.

29 (D-1) "HEALTH CARE COVERAGE" MEANS HEALTH CARE COVERAGE OF AN  
30 INDIVIDUAL UNDER:

31 (1) AN EMPLOYER-SPONSORED PLAN;

32 (2) A HEALTH BENEFIT PLAN OR AN INDIVIDUAL HEALTH BENEFIT  
33 PLAN, AS DEFINED IN § 15-1301 OF THE INSURANCE ARTICLE;

34 (3) PART A OR PART B OF TITLE XVIII OF THE SOCIAL SECURITY ACT;

1 (4) TITLE XIX OR TITLE XXI OF THE SOCIAL SECURITY ACT, OTHER THAN  
2 COVERAGE CONSISTING SOLELY OF BENEFITS UNDER § 1928 OF THAT ACT;

3 (5) CHAPTER 55 OF TITLE 10 OF THE UNITED STATES CODE;

4 (6) A MEDICAL CARE PROGRAM OF THE INDIAN HEALTH SERVICE OR OF  
5 A TRIBAL ORGANIZATION;

6 (7) A STATE HEALTH BENEFITS RISK POOL;

7 (8) A HEALTH PLAN OFFERED UNDER THE FEDERAL EMPLOYEES  
8 HEALTH BENEFITS PROGRAM, TITLE 5, CHAPTER 89 OF THE UNITED STATES CODE;

9 (9) A PUBLIC HEALTH PLAN AS DEFINED BY FEDERAL REGULATIONS  
10 AUTHORIZED BY THE PUBLIC HEALTH SERVICE ACT, § 2701(C)(1)(I), AS AMENDED BY  
11 P.L. 104-191; OR

12 (10) A HEALTH BENEFIT PLAN UNDER § 5(E) OF THE PEACE CORPS ACT, 22  
13 U.S.C. 2504(E).

14 (e) "Individual" means, unless expressly provided otherwise, a natural person  
15 or a fiduciary.

16 (e-1) "Investment conduit" means:

17 (1) any of the following entities described in the Internal Revenue Code:

18 (i) a regulated investment company;

19 (ii) a real estate investment trust; or

20 (iii) a real estate mortgage investment conduit; or

21 (2) any other entity that the Comptroller determines by regulation to  
22 enjoy a status under the Internal Revenue Code pursuant to which the entity is not  
23 generally subject to income tax at the entity level so long as substantially all of its  
24 profits are distributed to the holders of equity interests in the entity.

25 (f) "Maryland taxable income" means:

26 (1) for an individual, Maryland adjusted gross income, less the  
27 exemptions and deductions allowed under this title; and

28 (2) for a corporation, Maryland modified income as allocated under this  
29 title.

30 (g) "Nonresident" means an individual who is not a resident.

31 (G-1) "POVERTY INCOME STANDARD" MEANS THE MOST RECENT POVERTY  
32 INCOME GUIDELINE PUBLISHED BY THE UNITED STATES DEPARTMENT OF HEALTH  
33 AND HUMAN SERVICES, AVAILABLE AS OF JULY 1 OF THE TAXABLE YEAR.

1 (h) (1) "Resident" means:

2 (i) an individual, other than a fiduciary, who:

3 1. is domiciled in this State on the last day of the taxable  
4 year; or

5 2. for more than 6 months of the taxable year, maintained a  
6 place of abode in this State, whether domiciled in this State or not;

7 (ii) a personal representative of an estate if the decedent was  
8 domiciled in this State on the date of the decedent's death; or

9 (iii) a fiduciary, other than a personal representative, of a trust if:

10 1. the trust was created, or consists of property transferred,  
11 by the will of a decedent who was domiciled in the State on the date of the decedent's  
12 death;

13 2. the creator or grantor of the trust is a current resident of  
14 the State; or

15 3. the trust is principally administered in the State.

16 (2) "Resident" includes, for the part of the taxable year that an  
17 individual resides in this State, an individual who:

18 (i) moves to this State with the intent to be domiciled in this State;  
19 or

20 (ii) is domiciled in this State and moves outside this State before  
21 the last day of the taxable year with the bona fide intention to remain permanently  
22 outside of this State.

23 (3) If an individual under paragraph (2)(ii) of this subsection again  
24 resides in this State within 6 months after having moved outside this State, there is  
25 a rebuttable presumption that the individual did not have a bona fide intention to  
26 remain permanently outside this State.

27 (h-1) "Special exempt entity" means:

28 (1) any of the following entities described in the Internal Revenue Code:

29 (i) a farmers' cooperative;

30 (ii) a political organization; or

31 (iii) a homeowners association; or

1 (2) any other entity not described in § 10-104(2) of this title that the  
2 Comptroller determines by regulation to be exempt from federal income tax on all or  
3 some part of its income.

4 (i) "S corporation" means a corporation that elects to be taxed as a small  
5 business corporation under Subchapter S of the Internal Revenue Code.

6 (j) "State income tax" means the State tax on income imposed under this title.

7 (k) (1) "Taxable year" means:

8 (i) the period for which Maryland taxable income is computed  
9 under this title; and

10 (ii) the annual accounting period defined in § 441 of the Internal  
11 Revenue Code.

12 (2) "Taxable year" includes:

13 (i) a calendar year ending on December 31, as defined in § 441 of  
14 the Internal Revenue Code;

15 (ii) a fiscal year ending on the last day of a month other than  
16 December, as defined in § 441 of the Internal Revenue Code;

17 (iii) if a return is made for a period of less than 1 year, the period for  
18 which the return is made; or

19 (iv) if an election is made under § 441(f) of the Internal Revenue  
20 Code, the period for which a return is made.

21 10-211.

22 (A) Whether or not a federal return is filed, to determine Maryland taxable  
23 income, an individual other than a fiduciary may deduct as an exemption:

24 (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, for each  
25 exemption that the individual may deduct in the taxable year to determine federal  
26 taxable income under § 151 of the Internal Revenue Code:

27 (i) \$1,750 for a taxable year beginning after December 31, 1997 but  
28 before January 1, 1999;

29 (ii) \$1,850 for a taxable year beginning after December 31, 1998 but  
30 before January 1, 2000;

31 (iii) \$1,850 for a taxable year beginning after December 31, 1999 but  
32 before January 1, 2001;

33 (iv) \$2,100 for a taxable year beginning after December 31, 2000 but  
34 before January 1, 2002; and

- 1 (v) \$2,400 for a taxable year beginning after December 31, 2001;
- 2 (2) for each dependent, as defined in § 152 of the Internal Revenue Code,  
3 who is at least 65 years old on the last day of the taxable year, an additional:
- 4 (i) \$1,750 for a taxable year beginning after December 31, 1997 but  
5 before January 1, 1999;
- 6 (ii) \$1,850 for a taxable year beginning after December 31, 1998 but  
7 before January 1, 2000;
- 8 (iii) \$1,850 for a taxable year beginning after December 31, 1999 but  
9 before January 1, 2001;
- 10 (iv) \$2,100 for a taxable year beginning after December 31, 2000 but  
11 before January 1, 2002; and
- 12 (v) \$2,400 for a taxable year beginning after December 31, 2001;
- 13 (3) an additional \$1,000 if the individual, on the last day of the taxable  
14 year, is at least 65 years old; and
- 15 (4) an additional \$1,000 if the individual, on the last day of the taxable  
16 year, is a blind individual, as described in § 10-208(c) of this subtitle.

17 (B) (1) IF AN INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME FOR THE  
18 TAXABLE YEAR GREATER THAN 300% OF THE APPLICABLE POVERTY INCOME LEVEL,  
19 THE INDIVIDUAL MAY NOT DEDUCT AN EXEMPTION UNDER SUBSECTION (A) OF THIS  
20 SECTION UNLESS THE INDIVIDUAL FOR WHOM THE EXEMPTION IS CLAIMED HAD  
21 HEALTH CARE COVERAGE FOR AT LEAST 6 MONTHS OF THE TAXABLE YEAR.

22 (2) IF AN INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME FOR THE  
23 TAXABLE YEAR GREATER THAN 300% OF THE APPLICABLE POVERTY INCOME LEVEL  
24 AND HAS NOT HAD HEALTH CARE COVERAGE FOR 12 CONSECUTIVE MONTHS  
25 IMMEDIATELY PRIOR TO OBTAINING HEALTH CARE COVERAGE, AN INDIVIDUAL MAY  
26 SATISFY THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION BY HAVING A  
27 HEALTH BENEFIT PLAN OR AN INDIVIDUAL HEALTH BENEFIT PLAN THAT MEETS AT  
28 LEAST THE REQUIREMENTS OF § 15-1207 OF THE INSURANCE ARTICLE.

29 10-217.

- 30 (a) (1) (i) Except as otherwise provided in this subsection, an individual  
31 may elect to use the standard deduction to compute Maryland taxable income  
32 whether or not the individual itemizes deductions on the individual's federal income  
33 tax return in determining federal taxable income.
- 34 (ii) If an individual elects to use the standard deduction on the  
35 federal income tax return, the individual may not take any itemized deduction in §  
36 10-218 of this subtitle.

1 (2) A fiduciary may not use the standard deduction.

2 (3) (I) IF AN INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME  
3 FOR THE TAXABLE YEAR GREATER THAN 300% OF THE APPLICABLE POVERTY  
4 INCOME LEVEL, THE INDIVIDUAL MAY NOT USE THE STANDARD DEDUCTION UNLESS  
5 THE INDIVIDUAL HAD HEALTH CARE COVERAGE FOR AT LEAST 6 MONTHS OF THE  
6 TAXABLE YEAR.

7 (II) IF AN INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME  
8 FOR THE TAXABLE YEAR GREATER THAN 300% OF THE APPLICABLE POVERTY  
9 INCOME LEVEL AND HAS NOT HAD HEALTH CARE COVERAGE FOR 12 CONSECUTIVE  
10 MONTHS IMMEDIATELY PRIOR TO OBTAINING HEALTH CARE COVERAGE, AN  
11 INDIVIDUAL MAY SATISFY THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS  
12 PARAGRAPH BY HAVING A HEALTH BENEFIT PLAN OR AN INDIVIDUAL HEALTH  
13 BENEFIT PLAN THAT MEETS AT LEAST THE REQUIREMENTS OF § 15-1207 OF THE  
14 INSURANCE ARTICLE.

15 (b) Subject to the limitation in subsection (c) of this section, the standard  
16 deduction for an individual is an amount equal to 15% of the individual's Maryland  
17 adjusted gross income.

18 (c) (1) For an individual other than one described in paragraphs (2) and (3)  
19 of this subsection, the standard deduction:

20 (i) may not be less than \$1,500; and

21 (ii) may not exceed \$2,000.

22 (2) For an individual described in § 2 of the Internal Revenue Code as a  
23 head of household or as a surviving spouse, the standard deduction:

24 (i) may not be less than \$3,000; and

25 (ii) may not exceed \$4,000.

26 (3) For spouses on a joint return, the standard deduction:

27 (i) may not be less than \$3,000; and

28 (ii) may not exceed \$4,000.

29 10-218.

30 (a) [Only] SUBJECT TO SUBSECTION (C) OF THIS SECTION, ONLY an  
31 individual who itemizes deductions on the individual's federal income tax return may  
32 elect to itemize deductions on the individual's income tax return.

33 (b) An individual who elects to itemize deductions is allowed as a deduction  
34 the sum of the individual's federal itemized deductions:

35 (1) limited and reduced as required under the Internal Revenue Code;

1           (2)       further reduced by any amount deducted under § 170 of the Internal  
2 Revenue Code for contributions of a preservation or conservation easement for which  
3 a credit is claimed under § 10-723 of this title; and

4           (3)       further reduced by the amount claimed as taxes on income paid to a  
5 state or political subdivision of a state, after subtracting a pro rata portion of the  
6 reduction to itemized deductions required under § 68 of the Internal Revenue Code.

7       (C)       (1)       EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF AN  
8 INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME FOR THE TAXABLE YEAR  
9 GREATER THAN 300% OF THE APPLICABLE POVERTY INCOME LEVEL, THE  
10 INDIVIDUAL MAY NOT ITEMIZE DEDUCTIONS UNLESS THE INDIVIDUAL HAD HEALTH  
11 CARE COVERAGE FOR AT LEAST 6 MONTHS OF THE TAXABLE YEAR.

12           (2)       IF AN INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME FOR THE  
13 TAXABLE YEAR GREATER THAN 300% OF THE APPLICABLE POVERTY INCOME LEVEL  
14 AND HAS NOT HAD HEALTH CARE COVERAGE FOR 12 CONSECUTIVE MONTHS  
15 IMMEDIATELY PRIOR TO OBTAINING HEALTH CARE COVERAGE, AN INDIVIDUAL MAY  
16 SATISFY THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION BY HAVING A  
17 HEALTH BENEFIT PLAN OR AN INDIVIDUAL HEALTH BENEFIT PLAN THAT MEETS AT  
18 LEAST THE REQUIREMENTS OF § 15-1207 OF THE INSURANCE ARTICLE.

19       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 July 1, 2004, and shall be applicable to all taxable years beginning after December 31,  
21 2004.